

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRENDA C. NAILOR,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security Administration,

Defendant.

Case No. C09-5524RJB

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION OF  
THE MAGISTRATE  
JUDGE, AND  
REMANDING CASE TO  
THE COMMISSIONER OF  
SOCIAL SECURITY  
ADMINISTRATION

This matter comes before the court on review of the Report and Recommendation of the magistrate judge. Dkt. 16. The court has considered the Report and Recommendation, defendant's objections (Dkt. 17), plaintiff's response to the objections (Dkt. 18), and the remainder of the file herein.

On April 28, 2010, U.S. Magistrate Judge Richard J. Creatura issued a Report and Recommendation, recommending that this case be remanded to the Commissioner of Social Security for further consideration. Dkt. 16.

On May 14, 2010, defendant filed objections, requesting that the court review the matter de novo pursuant to 28 U.S.C. § 636(b)(1) and affirm the final decision of the Commissioner. Dkt. 17. Defendant contends that the ALJ considered and thoroughly discussed plaintiff's hand and wrist problems, and depression, and specifically noted that she had considered the combined effects of all of plaintiff's

1 medically determinable impairments in the remaining steps of the sequential evaluation process. Further,  
2 defendant maintains that the ALJ properly considered plaintiff's depression, and her hand and wrist  
3 impairments at step three, in evaluating plaintiff's credibility, in making the finding on residual functional  
4 capacity; and at step four.

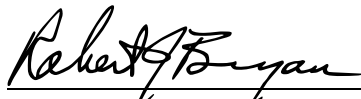
5 The court has reviewed the record *de novo*. The record supports a finding that plaintiff's wrist and  
6 hand pain was severe and more than *de minimis*; and that plaintiff suffers from depression, which had  
7 more than a minimal effect on her ability to work. The ALJ erred at step two, which requires a new  
8 evaluation of plaintiff's credibility and residual functional capacity. The court concurs with the analysis  
9 and conclusion of the Magistrate Judge. This case should be remanded to the Commissioner of the Social  
10 Security Administration for further consideration, consistent with the Report and Recommendation.

11 Therefore, it is hereby **ORDERED** that

12 The Report and Recommendation of the magistrate judge (Dkt. 16) is **ADOPTED**. This case is  
13 **REMANDED** to the Commissioner of the Social Security Administration for further consideration,  
14 consistent with the Report and Recommendation.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
16 party appearing *pro se* at said party's last known address.

17 DATED this 7<sup>th</sup> day of June, 2010.

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20 Robert J. Bryan  
21 United States District Judge  
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